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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY: *yeb* DEPUTY

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

RUFUS GRAY, JR.,

Petitioner,

vs.

STUART RYAN, Warden, et al.,

Respondents.

CASE NO. 09cv709 BEN (CAB)

**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

Petitioner Rufus Gray Jr., a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. On March 15, 2010, Petitioner filed a motion to stay federal proceedings while Petitioner exhausts claims three and six of his Second Amended Petition in the California Supreme Court. Respondents opposed the motion.

On October 27, 2010, the Honorable Magistrate Judge Cathy Ann Bencivengo issued a Report and Recommendation, recommending that the Court deny Petitioner's motion for stay and abeyance. Dkt. No. 32. Any objections to the Report and Recommendation were due November 24, 2010. *Id.* No objections have been filed. For the reasons stated below, the Court ADOPTS the well-reasoned Report and Recommendation of the Magistrate Judge and DENIES Petitioner's motion for stay and abeyance.

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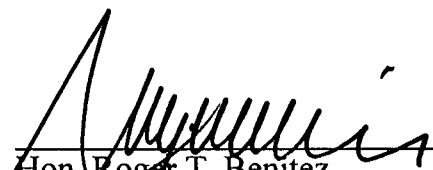
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1 A district judge “may accept, reject, or modify the recommended disposition” of a  
2 Magistrate Judge on a dispositive matter. FED. R. CIV. P. 72(b)(3); *see also* 28 U.S.C.  
3 §636(b)(1). “[T]he district judge must determine de novo any part of the [report and  
4 recommendation] that has been properly objected to.” FED. R. CIV. P. 72(b)(3). However,  
5 “[t]he statute makes it clear that the district judge must review the magistrate judge’s findings  
6 and recommendations de novo *if objection is made*, but not otherwise.” *United States v.*  
7 *Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc), *cert denied*, 540 U.S. 900 (2003)  
8 (emphasis in original); *see also Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005).  
9 “Neither the Constitution nor the statute requires a district judge to review, de novo, findings  
10 and recommendations that the parties themselves accept as correct.” *Reyna-Tapia*, 328 F.3d  
11 at 1121.

12 In the absence of any objections, the Court **ADOPTS** the Report and Recommendation  
13 in its entirety and **DENIES** Petitioner’s motion for stay and abeyance.

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15 **IT IS SO ORDERED.**

16  
17 DATED: 12/01/2010

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19 Hon. Roger T. Benitez  
20 United States District Court  
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